

SEP 17 1983

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83-457

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ANTHONY HENRY HYDE,
Petitioner,

VS.

STATE OF MISSISSIPPI,
Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSISSIPPI**

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QUESTIONS PRESENTED

1. Whether Petitioner was denied effective assistance of counsel at trial, where trial counsel failed to interview and obtain testimony from witnesses critical to Petitioner's defense.
2. Whether Petitioner was denied due process of law where the Supreme Court of Mississippi denied his Motion for New Trial and said Motion presented newly discovered evidence which conclusively establishes perjury by one of the State's most important witnesses at Petitioner's trial.

RULE 28:1 STATEMENT

Parties to this case are:

Anthony Henry Hyde, an Individual

State of Mississippi

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**PETITION FOR WRIT OF CERTIORARI
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Anthony Henry Hyde respectfully prays that a Writ of Certiorari issued to review the decision of the Supreme Court of Mississippi denying Petitioner's Application for Leave to File in the Lower Court a Petition for Writ of Error Coram Nobis and Motion for a New Trial. See *Anthony Henry Hyde v. State of Mississippi*, No. 53,424.

OPINIONS BELOW

The decision of the Supreme Court of Mississippi which denies Petitioner's Application for Leave to File in the Lower Court a Petition for Writ of Error Coram Nobis and Motion for a New Trial was handed down on July 20, 1983 without written opinion. The original decision of the Supreme Court of Mississippi, affirming Petitioner's conviction in the Circuit Court of Jackson County, Mississippi, of the crime of Rape and is sentenced to serve a term of twenty-five (25) years in the

custody of the Department of Corrections, is reported as *Hyde v. State*, 413 So.2d 1042 (1982). The decision denying Petitioner's Application appears as Appendix A and the opinion of the Supreme Court of Mississippi affirming Petitioner's original conviction appears as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the Sixth Amendment and Fourteenth Amendment of the United States Constitution.

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The federal questions sought to be reviewed were first raised by Petitioner in connection with his Application for Leave to File in the Lower Court a Petition for Writ of Error Coram

Nobis and Motion for New Trial. Since the Supreme Court of Mississippi did not issue a written opinion in response to Petitioner's Application, Petitioner has no knowledge as to how these constitutional or federal questions were passed upon by the Supreme Court of Mississippi other than that his Application was denied.

STATEMENT OF THE CASE

Petitioner, Anthony Henry Hyde, is presently incarcerated in the Mississippi State Penitentiary, Parchman, Mississippi. On or about May 28, 1981, Petitioner was convicted in the Circuit Court of Jackson County, Mississippi, of the crime of Rape, and sentenced to serve a term of twenty-five (25) years in the custody of the Mississippi Department of Corrections. A timely appeal was filed with the Mississippi Supreme Court and in a decision dated May 19, 1982, the Mississippi Supreme Court affirmed Petitioner's conviction (*Hyde v. State*, 413 So.2d 1042 (1982)). See Appendix B.

Petitioner contends that during his trial he was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. Petitioner contends that his trial attorneys failed to interview and obtain the testimony of two key witnesses, namely Kathy Cooper and Cherlyn Hoskins. Their affidavits are attached to the Petition for Writ of Error Coram Nobis proposed to be filed in the Lower Court as Exhibit A and Exhibit B. See Appendix D.

In his Motion for New Trial, Petitioner presented newly discovered evidence which conclusively establishes that one of the key witnesses for the State, Elliott Lett, committed perjury during Petitioner's trial. This motion was supported by the Affidavits of Ms. Cooper and Ms. Hoskins as well as attested true copies of three (3) orders from the Circuit Court of Jackson County, Mississippi. See Appendix E.

REASONS FOR GRANTING THE WRIT

I. Petitioner Was Denied Effective Assistance Of Counsel At Trial, Where Trial Counsel Failed To Interview And Obtain Testimony From Witnesses Critical To Petitioner's Defense.

Petitioner was represented by private counsel at his trial. However, a defendant who retains his own attorney does not waive his right to effective assistance of counsel as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution. See *Cuyler v. Sullivan*, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).

As the pleadings and attached Affidavits filed with the Supreme Court of Mississippi establish, defense counsel failed to interview and obtain the testimony of two key witnesses, namely Kathy Cooper and Cherlyn Hoskins. Both of these witnesses, and Ms. Cooper in particular, would have substantially rebutted and contradicted much of the case presented for the State of Mississippi against Petitioner at his trial. It should be noted that Kathy Cooper received a subpoena to testify at Petitioner's trial on behalf of the State of Mississippi. However, after discussion with the Assistant District Attorney, Ms. Cooper was released from her subpoena. This alone should have alerted defense counsel that an interview of Ms. Cooper was a necessity.

Kathy Cooper's Affidavit establishes that she would have contradicted the State's witnesses on several key matters. Ms. Cooper states that when she arrived at the house in which the victim was living, at approximately between 11:15 A.M. and 11:30 A.M., neither the furniture in the bedroom nor the living room were in disarray or thrown about. Ms. Cooper also states that the alleged victim, Betty Jean Langham, was unable to identify any of the men initially presented to her in photographs at the Police Department as being her assailant, although these photographs did include one of Petitioner. Perhaps most importantly, Ms. Cooper states that Betty Jean Langham had the

same scratches and bruises the night before October 23, 1980 that she had when Ms. Cooper arrived at the house during the morning of October 23, 1980.

Ms. Hoskins' Affidavit establishes that she observed the alleged victim, Betty Jean Langham, in a Chevrolet pick-up truck sitting between two black males at approximately 11:00 A.M. on the morning of October 23, 1980. Ms. Hoskins knew the Petitioner prior to October 23, 1980, and would testify that neither of these black males was the Petitioner.

Under the Sixth and Fourteenth Amendments to the United States Constitution, Petitioner was guaranteed assistance of effective and competent counsel at trial. Certainly, this protection requires that witnesses who are potentially favorable to the defendant be interviewed to determine if their testimony should, in fact, be presented during the trial. This is especially true where one of the witnesses, Kathy Cooper, was actually present in the Courtroom under subpoena and was immediately available for questioning.

In *Washington v. Strickland*, 693 F.2d 1243 (5th Cir. 1982), cert. granted June 6, 1983, 51 LW 3865, the Fifth Circuit Court of Appeals presented an extensive discussion regarding the duty of defense counsel to conduct a reasonably amount of pre-trial investigation in order to render effective assistance of counsel. Despite the possible complexity of this issue, despite the fact that the courts "should not judge the reasonableness of counsel's efforts from the omniscient perspective of hindsight," the Court in *Washington v. Strickland* concluded without hesitation:

When an attorney fails to conduct a substantial investigation into any of his client's plausible lines of defense, the attorney has failed to render effective assistance of counsel. (1257)

In failing to even interview Kathy Cooper, who was present in the courtroom immediately prior to Petitioner's trial, and failing to interview Cherlyn Hoskins, and in failing to obtain evidence of Elliott Lett's perjury, defense counsel in this case failed to conduct a threshold level of reasonable pre-trial investigation and, thus, failed to render Petitioner effective assistance of counsel.

Petitioner submits that the present case involves an important question of federal law which has not been, but should be settled, by this Court, consistent with this Court's granting of certiorari in *Washington v. Strickland, supra*.

II. Petitioner Was Denied Due Process Under The Fourteenth Amendment To The United States Constitution Where A Supreme Court Of Mississippi Denied His Motion For New Trial And Where Said Motion Presented Newly Discovered Evidence Which Conclusively Established Perjury By A Key Witness Of The State At Petitioner's Trial.

Petitioner's Motion for New Trial presented newly discovered evidence regarding the testimony of Elliott Lett, one of the key witnesses for the State of Mississippi during Petitioner's trial. This evidence includes the Affidavit of Kathy Cooper, the Affidavit of Cherlyn Hoskins and, most importantly, attested, true copies of three (3) orders from the Circuit Court of Jackson County, Mississippi, which establish that Mr. Lett is presently serving concurrent four-year terms in the Mississippi State Penitentiary for Possession of a Controlled Substance with Intent to Distribute, Distribution of a Controlled Substance and Possession of Controlled Substance with Intent to Deliver.

The fact of Mr. Lett's present incarceration in the Mississippi State Penitentiary establishes that he perjured himself during the following testimony at Petitioner's trial:

Q: (by Mr. Hamilton) You have no idea why Anthony came there that day, do you?

A: No.

Q: You don't peddle dope?

A: No.

Q: You don't sell dope, do you?

A: No. (R 44)

The three Orders from the Circuit Court of Jackson County, Mississippi, also support the following statement of Kathy Cooper in her Affidavit:

Elliott Lett is now serving a term in the Mississippi State Penitentiary for a drug-related crime and this fact alone contradicts his testimony at the trial of Anthony Henry Hyde.

As Petitioner contends in his proposed Motion for New Trial, this newly discovered evidence must also raise serious questions regarding the credibility of the testimony of the alleged victim, Betty Jean Langham. In her Affidavit, Ms. Cooper makes reference to the following post-trial statement by Ms. Langham:

7. Several weeks after the trial of Anthony Hyde, I saw Betty Jean Langham and asked her had she really been raped. Betty responded, 'What's it to you?' This response certainly planted a doubt in my mind as to whether she had really been raped.

This post-trial statement by the alleged victim must be taken into consideration along with the newly discovered evidence regarding Mr. Lett and the circumstances of Ms. Langham's life at the time of the alleged rape and Petitioner's trial. When all of these facts are taken into consideration, Ms. Langham's credibility is at best questionable and there exists more than a reasonable doubt as to Petitioner's guilt.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioner,
Anthony Henry Hyde

CERTIFICATE OF SERVICE

I, Michael Adelman, hereby certify that I have on this 16th day of September, 1983, caused three copies of the above and foregoing Petition for a Writ of Certiorari to the Supreme Court of Mississippi to be served by United States Mail, certified, return receipt requested, upon the following counsel of record for Respondent:

Honorable Frankie Walton White
Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205

MICHAEL ADELMAN

APPENDIX

APPENDIX "A"

IN THE SUPREME COURT OF MISSISSIPPI DECISIONS HANDED DOWN JULY 20, 1983

(Continued - Page 2)

WALKER, P.J.

- X 53,820 Whiteway Finance Co., Inc. v. Washington Green, Jr.; Chancery, Madison; Reversed and Rendered. Parther, J., Not Participating.
- X 53,823 M. C. Hilbert v. Giau Thanh Le; Chancery, Harrison; Reversed and Remanded. Parther, J., Not Participating.
- 53,314 James Jones v. State; Circuit, Hinds; Conviction of Manslaughter and Sentence of Twenty (20) Years Affirmed. Parther, J., Not Participating.
- 53,424 Anthony Henry Hyde v. State; Circuit, Jackson; Application for Leave to File in the Lower Court a Petition for Writ of Error Coram Nobis and Motion for a New Trial Denied.

APPENDIX B

Anthony Henry HYDE

v.

STATE of Mississippi.

No. 53424.

Supreme Court of Mississippi.

May 19, 1982.

Before WALKER, P. J., and ROY NOBLE LEE and DAN M. LEE, JJ.

DAN M. LEE, Justice, for the Court:

This is an appeal from the Circuit Court of Jackson County wherein Anthony Henry Hyde, defendant/appellant, was indicted, tried and convicted upon a charge of rape. Upon conviction, Hyde was sentenced to a term of twenty-five years in the Mississippi Department of Corrections after the jury failed to affix his punishment at life. We affirm.

On October 23, 1980, appellant and his brother Michael Hyde, drove to 4027 West Pine Street in Moss Point, Mississippi, between 10:00 and 10:30 a.m. According to appellant and his brother, the purpose of this visit was to purchase marijuana from Elliott Lett, the occupant of the house, so appellant would have something to smoke during a bus ride to Chicago.

Appellant parked his automobile in Lett's front yard and then proceeded to the door. The prosecutrix, Lett's 17-year-old live-in companion, answered the door and informed appellant Lett was at school and would not be home until 12:00 p.m. Appellant then left.

Appellant returned to Lett's house alone approximately one hour later. When the prosecutrix told appellant Lett had not returned home, appellant forced his way into the house,

wielding a gun. He began ransacking the house asking the prosecutrix where Lett kept his dope. When appellant was unable to find any drugs, he grabbed the prosecutrix. After a brief struggle, the appellant forced himself upon the prosecutrix and raped her.

When Lett arrived home, he found his house in shambles and the prosecutrix crying in the bedroom. Lett took her to his grandmother's house, which was next door, where she bathed, and the police were summoned.

The prosecutrix identified appellant from nine photographs as the person who raped her. An examination at the Singing River Hospital that afternoon revealed that she had recently engaged in sexual intercourse. Hair samples taken from the appellant and the prosecutrix's clothing were compared in the F.B.I. laboratory. All twenty individual characteristics identified in appellant's hair matched the characteristics of the hair taken from the victim's clothing.

Appellant voluntarily surrendered to the police on November 11, 1980, shortly after returning from Chicago. He denied that it was he who raped the prosecutrix.

I. Was the verdict of the jury against the overwhelming weight of the evidence?

In *Sadler v. State*, 407 So.2d 95 (Miss. 1981), this Court stated:

Among the alleged errors assigned is that the trial court should have sustained Sadler's motion for a new trial on the ground that the jury verdict was not supported by sufficient credible evidence.

Considering the evidence, as we must, in the light most favorable to the state and accepting as true the evidence supporting or tending to support the verdict, with all inferences supportive of the verdict that reasonably may be

drawn therefrom, we find no merit in this contention. *Glass v. State*, 278 So.2d 384 (Miss.1973). In *Spikes v. State*, 302 So.2d 250 (Miss. 1974), this Court said:

“On appeal, in this situation, in passing upon the sufficiency of evidence to support a verdict, this Court must accept as true the evidence which supports the verdict. *Murphree v. State*, 228 So.2d 599 (Miss.1969). [302 So.2d at 251].”

The resolution of such conflicts as there were in the evidence in this case, was peculiarly for the jury. In *Hankins v. State*, 288 So.2d 866 (Miss.1974), it was said:

“In *Evans v. State*, 159 Miss. 561, 132 So. 563 (1931), we stated:

‘We invite the attention of the bar to the fact that we do not reverse criminal cases where there is a straight issue of fact, or a conflict in the facts; juries are impaneled for the very purpose of passing upon such questions of disputed fact, and we do not intend to invade the province and prerogative of the jury. (159 Miss. at 566, 132 So. at 564)’ ” (407 So.2d at 97)

[1] The evidence in the case at bar was conflicting. The state's evidence tended to prove that appellant committed the rape, while he denied he committed the offense. The testimony of the prosecutrix was corroborated by the testimony of Vicki Lowery who saw appellant at Lett's house on two occasions on the day the rape occurred, and also by Elliot Lett, Kenneth Smith and detective Gary Jones' testimony as to the condition of the house following the rape. The prosecutrix positively identified appellant as her attacker. The rape examination revealed scratches and scrapes around the prosecutrix's neck as well as evidence of recent sexual intercourse. Moreover, hair samples taken from the prosecutrix's clothes compared remarkably with hair samples taken from appellant's head.

The conflict in the evidence was for the jury's resolution. The evidence was more than sufficient to support the verdict of the jury.

II. Did the trial court err in failing to grant a mistrial when the district attorney caused appellant to display the condition of his teeth to the jury?

Appellant, during cross-examination, was asked by the district attorney to step down from the witness stand and display the condition of his teeth to the jury. On appeal, he argues the effect of this action was to bolster the state's case and prejudiced the jury against him due to the fact that there was no evidence before the jury as to the condition of the assailant's teeth.

In *King v. State*, 230 So.2d 209 (Miss. 1970), which involved felonious possession of narcotic drugs, defendant, after taking the witness stand, was compelled to exhibit his arm to the jury, showing festered bumps on his arm. We stated:

We are of the opinion that the defendant was not prejudiced by being required to exhibit his arm to the jury while he was on the witness stand testifying in his own defense. The appellant voluntarily took the witness stand and, being a witness, he was required to answer questions on cross examination related to the issue. McCormick on Evidence § 131, page 274 (1954); 8 Wigmore on Evidence § 2265 (McNaughton rev. 1961), page 386; *Tyson v. State*, 237 Miss. 149, 112 So.2d 563 (1959); *People v. Widener*, 220 Cal. App.2d 826, 34 Cal.Rptr. 130 (1963). (230 So.2d at 211-12).

[2] Appellant having voluntarily taken the witness stand in his own defense was not prejudiced by being required to exhibit the condition of his teeth to the jury.

Based on the foregoing, this case is affirmed.

AFFIRMED.

PATTERSON, C. J., SUGG and WALKER, P. JJ., and
BROOM, ROY NOBLE LEE, BOWLING, HAWKINS and
DARDEN, JJ., concur.

APPENDIX "C"

IN THE SUPREME COURT OF MISSISSIPPI

No. 53,424

Anthony Henry Hyde
Petitioner

vs.

State of Mississippi
Respondent

**APPLICATION FOR LEAVE TO FILE IN THE LOWER
COURT A PETITION FOR WRIT OF ERROR CORAM
NOBIS AND MOTION FOR NEW TRIAL**

COMES NOW the Petitioner, Anthony Henry Hyde, and presents to this Court an Application for Leave to File in the Lower Court a Petition for Writ of Error Coram Nobis and Motion for New Trial and in support thereof would show the following:

1. Petitioner is presently incarcerated in the Mississippi State Penitentiary, Parchman, Mississippi. On or about May 29, 1981, Petitioner was convicted in the Circuit Court of Jackson County, Mississippi, of the crime of Rape and sentenced to serve a term of twenty-five (25) years in the custody of the Mississippi Department of Corrections.

2. Attached hereto, and made a part hereof and adopted herein by reference, are the original and two executed copies of the Petition for Writ of Error Coram Nobis proposed to be filed in the lower Court sworn to by the Petitioner. The Petitioner's Affidavit designates what facts alleged in the Petition are within his personal knowledge and the Affidavits of Kathy Cooper and

Cherlyn Hoskins are attached to said Petition and cover facts not within the personal knowledge of Petitioner. The attached Petition states when the facts relied upon for issuance of the Writ came to Petitioner's knowledge, and state sufficient facts to show that there was no want of diligence on the part of Petitioner and his present counsel. The attached Petition is endorsed by a statement by Petitioner's counsel that he believes that the Petition for Writ of Error Coram Nobis is well taken, and should be granted.

3. The grounds for the issuance of the Writ of Error Coram Nobis are stated in the attached Petition and, in order to avoid repetition, will not be stated in detail here. Petitioner and Defendant maintains that trial counsel was not competent and that he was denied the assistance of counsel and protection guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and further maintains, for the reasons set forth in the attached Petition, that his conviction for the crime of Rape should be set aside.

4. Attached hereto, and made a part hereof and adopted herein by reference, are the original and two executed copies of Motion for New Trial proposed to be filed in the lower Court sworn to by the Petitioner. This Motion is supported by the Affidavits of Kathy Cooper and Cherlyn Hoskins as well as attested, true copies of Orders from the Circuit Court of Jackson County, Mississippi.

5. Petitioners' Motion for New Trial presents newly established evidence which conclusively establishes that one of the key witnesses for the State of Mississippi at Petitioner's trial committed perjury. This key witness was Mr. Elliott Lett, with whom the alleged victim was living at the time of the alleged crime. Mr. Lett testified at Petitioner's trial (R 44) that he did not sell or "peddle" drugs. Exhibits C, D, and E, attached to Petitioner's Motion for New Trial, establish that Mr. Lett is currently serving concurrent four-year terms on three drug-

related crimes, namely, Possession of a Controlled substance with Intent Distribute, Delivery of a Controlled Substance and Possession of Controlled Substance with Intent to Delivery. Mr. Lett plead guilty to each of these drug-related crimes and the credibility of not only his testimony but also the testimony of the alleged victim is directly impeached by this subsequent development.

Respectfully submitted,

/s/ Anthony Henry Hyde

STATE OF MISSISSIPPI
COUNTY OF SUNFLOWER

This day personally appeared before me, the undersigned Notary Public in and for said County and State, Anthony Henry Hyde, who, after having been by me first duly sworn, states that the matters and things stated in the above and foregoing Application are true and correct as therein stated and that such matters are based on the personal belief of Petitioner.

/s/ Anthony Henry Hyde

SWORN TO AND SUBSCRIBED before me on this the 23rd day of May, A.D., 1983.

/s/ Willie James
Notary Public

My Commission Expires:
January 21, 1986

STATEMENT OF COUNSEL

I, the undersigned Michael Adelman, counsel for the Petitioner, hereby states that I believe the Petition for Writ of Error Coram Nobis and Motion for New Trial are well taken and should be issued.

/s/ Michael Adelman

CERTIFICATE

I, Michael Adelman, do hereby certify that I have this date mailed, postage prepaid, by United States Mail, a true and correct copy of the above and foregoing Application for Leave to File in the Lower Court a Petition for Writ of Error Coram Nobis and Motion for New Trial and Brief in Support of Application for Leave to File in the Lower Court a Petition for Writ of Error Coram Nobis and Motion for New Trial to the Honorable Frankie Walton White, Assistant Attorney General, at his usual business mailing address of Post Office Box 220, Jackson, Mississippi, 39205.

This the 26th day of May, A.D., 1983.

/s/ Michael Adelman

APPENDIX "D"

**IN THE CIRCUIT COURT OF JACKSON COUNTY
MISSISSIPPI**

Cause No. 10,558

State of Mississippi

vs.

Anthony Henry Hyde

PETITION FOR WRIT OF ERROR CORAM NOBIS

COMES NOW Anthony Henry Hyde, by and through his attorneys, Andelman, Adelman & Steiner, P.A., and shows unto the Honorable Court the following facts:

1. Petitioner is presently incarcerated in the Mississippi State Penitentiary, Parchman, Mississippi.
2. On or about May 28, 1982, Petitioner was convicted in the Circuit Court of Jackson County, Mississippi, of the crime of rape and received a sentence of twenty-five (25) years in the custody of the Mississippi State Department of Corrections.
3. Petitioner's conviction was in violation of guarantees provided by the Sixth and Fourteenth Amendments to the United States Constitution in that said Petitioner was denied the assistance of competent counsel and said conviction should be set aside for the reasons set forth hereinbelow.
4. Petitioner was convicted of having raped Betty Jean Langham on the morning of October 23, 1980 sometime before noon on that date. At the time in question, Betty Jean Langham was living in a house located on West Pine Street in Moss Point,

Mississippi with Elliott Lett. The house was owned by Elliott Lett's grandmother who lived next door. During the morning of October 23, 1980, Mr. Lett was attending classes at a local junior college. According to the record, Petitioner and his brother, Michael Hyde, first went to the house where Ms. Langham was living to obtain some illegal drugs. According to the victim's testimony, Petitioner returned later that morning without his brother and raped Ms. Langham. According to the testimony of Elliott Lett, as well as his friend Kenny Smith, who arrived at the house with him, when Mr. Lett returned to the house on West Pine Street, at approximately noon on October 23, 1980, he found the victim lying on the floor in her bedroom. He testified that the furniture in the living room was in great disarray and scattered about. Betty Jean Langham went next door to the home of Elliott Lett's grandmother to take a bath before going to the Police Department and the hospital. There are several discrepancies regarding who accompanied Betty Jean Langham to the house next door and at what point she identified her assailant.

5. Petitioner was represented at his trial by the Honorable Richard Hamilton, attorney from Pascagoula, Mississippi. In turn, Mr. Hamilton was assisted by the Honorable Larry Wilson, also from Pascagoula, Mississippi. However, Petitioner initially retained a different attorney, the Honorable Rex Gordon, and Mr. Gordon, in effect, turned the case over to Mr. Hamilton. Mr. Hamilton was privately retained by the Petitioner.

6. Mr. Hamilton failed to even interview two key witnesses, namely Kathy Cooper and Cherlyn Hoskins. Both of these witnesses, and Ms. Cooper in particular, would have substantially rebutted much of the case presented by the State of Mississippi against Petitioner at his trial. In fact, because she was present at the house in which the alleged victim was living shortly after the alleged incident, Ms. Cooper received a subpoena to testify at Petitioner's trial on behalf of the State of

Mississippi. However, after a discussion with the Assistant District Attorney, Ms. Cooper was released from the subpoena. On the other hand, Petitioner's attorney, Mr. Hamilton (as well as Mr. Wilson) did not discuss the case with her and asked her no questions whatsoever. (See Affidavit of Kathy Cooper attached as Exhibit A and Affidavit of Cherlyn Hoskins attached as Exhibit B. Both of these Exhibits are incorporated herein by reference as if fully set forth in actual words and figures.)

7. According to the attached Affidavit of Kathy Cooper (Exhibit A), she would have submitted the following testimony, all in direct contradiction to witnesses of the State of Mississippi:

(1) When Kathy Cooper, a close friend of the alleged victim, arrived at the house on West Pine Street in Moss Point, Mississippi, where the rape allegedly occurred, the victim was lying on the floor in her bedroom. Ms. Cooper arrived at this house approximately between 11:15 A.M. and 11:30 A.M. Ms. Cooper would testify that at that time neither the furniture in the bedroom nor in the living room was in disarray or thrown about. At most, there were two pillows on the floor in the living room.

(2) When Ms. Cooper arrived, Betty Jean would not say who raped her. Later, she said that a man called "Chico" or "Coco" had raped her, although she also said that she had "never seen him before."

(3) On October 23, 1980, the alleged victim, Betty Jean Langham, was unable to identify any of the men initially presented to her in photographs as being her assailant. However, these photographs did include one of Petitioner.

(4) Kathy Cooper would have testified that Betty Jean Langham had the same scratches and bruises the night before October 23, 1980 that she had when Kathy Cooper arrived at the house during the morning of October 23, 1980.

(5) Ms. Cooper has also stated in her Affidavit that Elliott Lett, with whom the alleged victim was living at the time of the alleged rape, is now serving a term in the Mississippi State Penitentiary for a drug-related crime. This fact alone contradicts his testimony at the trial of Petitioner.

(6) Ms. Cooper will also testify that after the trial of Petitioner, she saw the alleged victim and asked her if she had really been raped. Betty Jean Langham responded, "What's it to you?" This response has planted a doubt in the mind of Kathy Cooper as to whether or not Betty Jean Langham had really been raped.

8. According to the Affidavit of Cherlyn Hoskins (Exhibit B), she knew both Petitioner and his brother, Michael Hyde, prior to October 23, 1980 and also knew Betty Jean Langham before that date. She and Ms. Langham essentially lived in the same neighborhood. Ms. Hoskins would testify that on the morning of October 23, 1980, both Petitioner and his brother came by the house in which Ms. Hoskins was living between 10:30 and 11:00 A.M. They stayed approximately 15 or 20 minutes. When Ms. Hoskins was leaving the house, she saw the alleged victim, Betty Jean Langham, drive by in a green, silver Chevrolet pickup truck sitting between two black males. She can identify one of the black males, the driver, as an individual who is called "Little Bro," and whose last name is Booker. She would further testify that Betty Jean Langham was sitting in the center of the truck between the two men. This sighting of the alleged victim by Ms. Hoskins would have occurred almost exactly at the time of the alleged rape and certainly contradicts much of the testimony of Ms. Langham.

9. As appears from the attached Affidavits (Exhibit A and Exhibit B), both Ms. Cooper and Ms. Hoskins were important witnesses and it should be apparent that the failure of defense counsel to interview either Ms. Hoskins or Ms. Cooper, and Ms.

Cooper in particular, is a violation of Petitioner's right to competent counsel at trial. Reference to Kathy Cooper's presence at the scene of the alleged crime, at the police department and at the hospital with Ms. Langham appear frequently throughout the transcript of the trial of Petitioner (E.g. R 48, R 62, R 100-101, R 128). The failure to call Ms. Cooper as a witness is neither explained by the State nor challenged by defense counsel at any place in the trial transcript.

10. There is no lack of diligence or delay on the part of Petitioner or his present counsel in obtaining the Affidavits of Kathy Cooper and Cherlyn Hoskins and presenting this Petition. Petitioner's present counsel was retained on April 19, 1983 by Petitioner and his family, the trial transcript was ordered from the Clerk of the Supreme Court that same day and received the following day. The Affidavits of Cherlyn Hoskins and Kathy Cooper were obtained and executed on May 3, 1983, after Petitioner's new counsel had an opportunity to review the trial transcript. Any further delay has been necessitated by the preparation of pleadings and supporting briefs and, further, by the fact that Petitioner is incarcerated in the Mississippi State Penitentiary which is located more than 200 miles from the office of his present attorney.

WHEREFORE, PREMISES CONSIDERED, the Petitioner prays that this Petition be received and heard by the Court and that, upon granting a full coram nobis hearing of all the evidence, the Petitioner's conviction of the crime of Rape and his sentence should be set aside and a new trial ordered.

Respectfully submitted,

/s/ Anthony Henry Hyde

VERIFICATION

STATE OF MISSISSIPPI
COUNTY OF SUNFLOWER

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named ANTHONY HENRY HYDE, Petitioner herein, who being first be me duly sworn, states upon his oath that all the things, matters, facts and allegations within his personal knowledge in the above and foregoing Petition for Writ of Error Coram Nobis are true and correct as therein stated.

/s/ Anthony Henry Hyde

SWORN TO AND SUBSCRIBED before me on this the 11th day of May, A.D., 1983.

NOTARY PUBLIC

My Commission Expires:
January 21, 1986

EXHIBIT A

AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF JACKSON

COMES NOW Kathy Cooper, who after being duly sworn, states on oath as follows:

1. My name is Kathy Cooper and I reside at 4201 Terrace Drive, Moss Point, Mississippi 39563. My date of birth is February 19, 1963 and my Social Security Number is 425-13-5432. I have a GED High School Diploma.
2. I understand that Anthony Hyde was charged and convicted of raping Betty Jean Langham on October 23, 1980. It is my understanding that this rape was alleged to have occurred sometime before noon on October 23, 1980.
3. At the time in question, Betty Jean Langham was a very close friend of mine. I was attending Moss Point High School and left school without permission to visit Betty Jean on the morning of October 23, 1980. I arrived at the house where Betty Jean was living, on West Pine Street, Moss Point, Mississippi, between 11:15 A.M. and 11:30 A.M. Betty Jean was lying on the floor in her bedroom. Elliott Lett and Kenny Smith were already there. At that time, Betty Jean would not say who raped her.
4. Neither the furniture in the bedroom nor in the living room was in disarray or thrown about. At most, there were two pillows on the floor in the living room. Shortly after I arrived, Detective Jones from the Moss Point Police Department arrived. Everyone but Kenny Smith went next door with Betty Jean to the house of Elliott Lett's grandmother. She owned the house in which Elliott and Betty Jean were living as well as her own house on the same lot. Betty Jean was taking a bath and both Elliott and Detective Jones suggested that I talk to her to find out who raped her. Elliott and I went in to the bathroom and

Betty Jean said that a man called "Chico" or "Coco" had raped her, although she also said that she had "never seen him before."

5. After Betty Jean finished her bath, I went to the Police Department with her. I was with her when the police presented several photographs of men who are called either "Chico" or "Coco." She was unable to identify any of the men in the photographs as being her assailant. However, it is my recollection that the photographs included one of a man who I later learned to be the Defendant, Anthony Hyde. I then accompanied Betty Jean to the hospital where she was examined by a doctor in the Emergency Room.

6. I received a subpoena to testify at the trial of Anthony Hyde on behalf of the State of Mississippi. However, after a discussion with the Assistant District Attorney, Kathy King, I was released from the subpoena. Anthony Hyde's attorney, Mr. Hamilton, did not discuss the case with me and asked me no questions whatsoever.

7. Several weeks after the trial of Anthony Hyde, I saw Betty Jean Langham and asked her if she had really been raped. Betty responded, "What's it to you?" This response certainly planted a doubt in my mind as to whether she had really been raped.

8. Also, I know that Betty Jean had scratches and bruises before the morning of October 23, 1980, because I saw Elliott Lett beat her up the very night before. Elliott Lett is now serving a term in the Mississippi State Penitentiary for a drug-related crime and this fact alone contradicts his testimony at the trial of Anthony Hyde.

Further, affiant sayeth not.

/s/ Kathy Cooper

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SWORN TO AND SUBSCRIBED before me on this the 3rd
day of May, A.D., 1983.

/s/ Earnestine E. Fountain
Notary Public

My Commission Expires:
May 24, 1984

EXHIBIT B

AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF JACKSON

COMES NOW Cherlyn Hoskins, who after being duly sworn, states on oath as follows:

1. My name is Cherlyn Hoskins, and I reside at my mother's house at 4148 Triumph Avenue in Moss Point, Mississippi. My date of birth is September 22, 1955 and my Social Security Number is 426-04-4806.

2. I knew both Anthony and Michael Hyde prior to October 23, 1980 and also knew Betty Jean Langham before that date. Triumph Avenue is one street over from West Pine Street where Betty Jean was living in a house with Elliott Lett.

3. On the morning of October 23, 1980, both Anthony and Michael came by my mother's house on Triumph Avenue between 10:30 and 11:00 A.M. They stayed approximately fifteen or twenty minutes. I had to leave with my sister and as we were all leaving the house, I saw Betty Jean Langham drive by in a green, silver Chevrolet pickup truck sitting between two black males. I could identify the driver as an individual called "Little Bro," whose last name is Booker. Betty Jean was sitting in the center between the two men.

Further dependent sayeth not.

/s/ Cherlyn Hoskins

SWORN TO AND SUBSCRIBED before me on this the 3rd day of May, A.D., 1983.

/s/ Earnestine E. Fountain
Notary Public

APPENDIX "E"

**IN THE CIRCUIT COURT OF JACKSON COUNTY,
MISSISSIPPI**

NO. 10,558

State of Mississippi

vs.

Anthony Henry Hyde

MOTION FOR NEW TRIAL

COMES NOW Anthony Henry Hyde, by and through his attorneys, Andelman, Adelman & Steiner, P.A., and prays that the Court vacate the judgment in this matter and order a new trial and in support of this Motion, Petitioner would show unto the Court the following facts:

1. Petition is presently incarcerated in the Mississippi State Penitentiary, Parchman, Mississippi.
2. On or about May 28, 1982, Petitioner was convicted in the Circuit Court of Jackson County, Mississippi, of the crime of Rape and received a sentence of twenty-five (25) years in the custody of the Mississippi State Department of Corrections.
3. Subsequent to his trial, and after obtaining new counsel, Petitioner has obtained newly discovered evidence which conclusively establishes that one of the key witnesses for the State of Mississippi during Petitioner's trial, Elliott Lett, perjured himself during his testimony at Petitioner's trial.

4. Petitioner was convicted of having raped Betty Jean Langham on the morning of October 23, 1980 sometime before noon on that date. At the time in question, Betty Jean Langham was living in a house located on West Pine Street in Moss Point, Mississippi with Elliott Lett. The house was owned by Elliott Lett's grandmother who lived next door. According to the Record, Petitioner and his brother, Michael Hyde, first went to the house where Ms. Langham was living with Elliott Lett to obtain some illegal drugs from Mr. Lett. According to the victim's testimony, Petitioner returned later that morning without his brother and raped Ms. Langham.

5. During the trial, Elliott Lett was an extremely important witness for the State of Mississippi. He testified that he was not at home during the morning of October 23, 1980, because he was attending classes at a local junior college. He specifically denied (R 44) that he sold illegal drugs. He testified that when he returned to the house on West Pine Street, at approximately noon on October 23, 1980, he found the victim lying on the floor in her bedroom. He testified that the furniture in the living room was in great disarray and scattered about. He was also the only witness for the State of Mississippi to testify that Ms. Langham named her assailant as "Coco" or "Chico" before going next door to the home of Elliott Lett's grandmother to take a bath.

6. Attached hereto are copies of the Affidavit of Kathy Cooper (Exhibit A) and the Affidavit of Cheryln Hoskins (Exhibit B). The original Affidavits of Ms. Cooper and Ms. Hoskins are attached to the Petition for Writ of Error Coram Nobis which is also being filed with this Court on behalf of Petitioner. Both of these Exhibits are incorporated herein by reference as if fully set forth in actual words and figures. Also attached hereto are attested, true copies of Orders (Exhibits C-E) from the Circuit Court of Jackson County, Mississippi, which establish that Elliott Lett is presently serving concurrent four-year terms for Possession of a Controlled Substance with

Intent Distribute, Delivery of Controlled Substance and Possession of Controlled Substance with Intent to Delivery. These Exhibits are also incorporated herein by reference as if fully set forth in actual words and figures.

7. Exhibits C, D, and E conclusively establish that Elliott Lett committed perjury when he testified at Petitioner's trial that he did not "peddle" illegal drugs. Certainly, this perjury challenges the credibility of all of Elliott Lett's testimony at the trial of Petitioner. Furthermore, this newly discovered evidence must also raise serious questions regarding the credibility of the testimony of the alleged victim, Betty Jean Langham. Ms. Langham was seventeen at the time of Petitioner's trial and was also seventeen at the time of the alleged rape. She and Elliott Lett were not married but were living together. Given this situation, and given the fact that Mr. Lett was a drug pusher, the conclusion is inescapable that Ms. Langham was under the substantial influence of Elliott Lett. This is further corroborated by the Affidavit of Kathy Cooper. In her Affidavit, Ms. Cooper states that she saw Ms. Langham after the trial of Petitioner and asked Ms. Langham if she had really been raped. Betty Jean Langham responded, "What's it to you?" This ambiguous response on the part of Ms. Langham is certainly consistent with the perjury committed by Elliott Lett and must raise more than a reasonable doubt as to whether or not Betty Jean Langham had been raped by Petitioner, if indeed she had ever been raped.

8. There is no lack of diligence or delay on the part of Petitioner or his present counsel in obtaining the Affidavits of Kathy Cooper and Cherlyn Hoskins and presenting this Petition. Petitioner's present counsel was retained on April 19, 1983 by Petitioner and his family, the trial transcript was ordered from the Clerk of the Supreme Court that same day and received the following day. The Affidavits of Cherlyn Hoskins and Kathy Cooper were obtained and executed on May 3, 1983, after Petitioner's new counsel had an opportunity to review the trial transcript. Any further delay has been necessitated by the

preparation of pleadings and supporting briefs and, further, by the fact that Petitioner is incarcerated in the Mississippi State Pententiary which is located more than 200 miles from the office of his present attorney.

WHEREFORE, PREMISES CONSIDERED, Anthony Henry Hyde prays that this Motion be received and heard by the Court and that upon a full hearing of this Motion, the conviction of Anthony Henry Hyde of the crime of Rape be vacated and a new trial ordered.

Respectfully submitted,

/s/ Anthony Henry Hyde

VERIFICATION

STATE OF MISSISSIPPI
COUNTY OF SUNFLOWER

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named ANTHONY HENRY HYDE, Petitioner herein, who being first by me duly sworn, states upon his oath that all the things, matters, facts and allegations within his personal knowledge in the above and foregoing Motion for New Trial are true and correct as therein stated.

/s/ Anthony Henry Hyde

SWORN TO AND SUBSCRIBED before me on this the 23rd day of May, A.D., 1983.

NOTARY PUBLIC

My Commission Expires:
January 21, 1986

EXHIBIT A

AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF JACKSON

COMES NOW Kathy Cooper, who after being duly sworn, states on oath as follows:

1. My name is Kathy Cooper and I reside at 4201 Terrace Drive, Moss Point, Mississippi 39563. My date of birth is February 19, 1963 and my Social Security Number is 425-13-5432. I have a GED High School Diploma.
2. I understand that Anthony Hyde was charged and convicted of raping Betty Jean Langham on October 23, 1980. It is my understanding that this rape was alleged to have occurred sometime before noon on October 23, 1980.
3. At the time in question, Betty Jean Langham was a very close friend of mine. I was attending Moss Point High School and left school without permission to visit Betty Jean on the morning of October 23, 1980. I arrived at the house where Betty Jean was living, on West Pine Street, Moss Point, Mississippi, between 11:15 A.M. and 11:30 A.M. Betty Jean was lying on the floor in her bedroom. Elliott Lett and Kenny Smith were already there. At that time, Betty Jean would not say who raped her.
4. Neither the furniture in the bedroom nor in the living room was in disarray or thrown about. At most, there were two pillows on the floor in the living room. Shortly after I arrived, Detective Jones from the Moss Point Police Department arrived. Everyone but Kenny Smith went next door with Betty Jean to the house of Elliott Lett's grandmother. She owned the house in which Elliott and Betty Jean were living as well as her own house on the same lot. Betty Jean was taking a bath and both

Elliott and Detective Jones suggested that I talk to her to find out who raped her. Elliott and I went in to the bathroom and Betty Jean said that a man called "Chico" or "Coco" had raped her, although she also said that she had "never seen him before."

5. After Betty Jean finished her bath, I went to the Police Department with her. I was with her when the police presented several photographs of men who are called either "Chico" or "Coco." She was unable to identify any of the men in the photographs as being her assailant. However, it is my recollection that the photographs included one of a man who I later learned to be the Defendant, Anthony Hyde. I then accompanied Betty Jean to the hospital where she was examined by a doctor in the Emergency Room.

6. I received a subpoena to testify at the trial of Anthony Hyde on behalf of the State of Mississippi. However, after a discussion with the Assistant District Attorney, Kathy King, I was released from the subpoena. Anthony Hyde's attorney, Mr. Hamilton, did not discuss the case with me and asked me no questions whatsoever.

7. Several weeks after the trial of Anthony Hyde, I saw Betty Jean Langham and asked her if she had really been raped. Betty responded, "What's it to you?" This response certainly planted a doubt in my mind as to whether she had really been raped.

8. Also, I know that Betty Jean had scratches and bruises before the morning of October 23, 1980, because I saw Elliott Lett beat her up the very night before. Elliott Lett is now serving a term in the Mississippi State Penitentiary for a drug-related crime and this fact alone contradicts his testimony at the trial of Anthony Hyde.

Further, affiant sayeth not.

/s/ Kathy Cooper

SWORN TO AND SUBSCRIBED before me on this the 3rd day of May, A.D., 1983.

/s/ Earnestine E. Fountain
Notary Public

My Commission Expires:
May 24, 1984

EXHIBIT B

AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF JACKSON

COMES NOW Cherlyn Hoskins, who after being duly sworn, states on oath as follows:

1. My name is Cherlyn Hoskins, and I reside at my mother's house at 4148 Triumph Avenue in Moss Point, Mississippi. My date of birth is September 22, 1955 and my Social Security Number is 426-04-4806.
2. I knew both Anthony and Michael Hyde prior to October 23, 1980 and also knew Betty Jean Langham before that date. Triumph Avenue is one street over from West Pine Street where Betty Jean was living in a house with Elliott Lett.
3. On the morning of October 23, 1980, both Anthony and Michael came by my mother's house on Triumph Avenue between 10:30 and 11:00 A.M. They stayed approximately fifteen or twenty minutes. I had to leave with my sister and as we were all leaving the house, I saw Betty Jean Langham drive by in a green, silver Chevrolet pickup truck sitting between two black males. I could identify the driver as an individual called "Little Bro," whose last name is Booker. Betty Jean was sitting in the center between the two men.

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Further deponent sayeth not.

/s/ Cherlyn Hoskins

SWORN TO AND SUBSCRIBED before me on this the 3rd
day of May, A.D., 1983.

/s/ Earnestine E. Fountain
Notary Public

My Commission Expires:
May 24, 1984

EXHIBIT C

**"NOT-GUILTY PLEA WITHDRAWN,
ENTER PLEA GUILTY"**

STATE OF MISSISSIPPI

VS. No. 11,288

ELLIOTT LETT

Comes the District Attorney who prosecutes the Pleas for the State of Mississippi and comes the Defendant, in the presence of his Attorney, and by leave of the Court withdraws Not Guilty Plea entered in this cause on a former day of this term and said Defendant being brought before the Court and arraigned in open Court upon the Indictment preferred herein of "Possession of a Controlled Substance With Intent To Distribute" for plea to said charge, said Defendant says GUILTY.

Thereupon said Defendant was placed at the bar of the Court for sentence and was asked by the Court if he had anything to say why the sentence of the law shall not be pronounced against him herein, and saying naught. It is thereupon considered and ordered by Court that said Defendant Elliott Lett for such his offense of "Possession of a Controlled Substance With Intent to Distribute" be and he is hereby sentenced to serve Four (4) Years in Miss. Dept. of Corrections.

date of sentence to commence from today, and that he pay all costs accrued in this cause and that he be remanded unto the custody of the Sheriff until safely transported to the Miss. Dept. of Corrections.

ORDERED this the 11th day of January A.D., 1982.

Circuit Court Judge

EXHIBIT D

"ARRAIGNMENT, PLEA and SENTENCE"

STATE OF MISSISSIPPI

VS. No. 11,422

ELLIOTT LETT

Comes the District Attorney who prosecutes the Pleas for the State of Mississippi, and comes Defendant, in the presence of his Attorney, who was brought before the Court and arraigned in open Court upon the Information preferred against herein of "Distribution of a Controlled Substance" and for plea to said charge said Defendant says that he is GUILTY.

Thereupon said Defendant was placed at the bar of the Court for sentence and was asked by the Court if he had anything to say why the sentence of the law shall not be pronounced against him herein, and saying naught. It is thereupon considered and ordered by the Court that said Defendant Elliott Lett for such his offense of "Distribution of a Controlled Substance" be and is hereby sentenced to serve Four (4) Years in Miss. Dept. of Corrections to run concurrently with Cause No. 11,288 _____ and pay all costs incurred in this prosecution and that he remain in custody until said sentence be fully complied with.

ORDERED this the 11th Day of January A.D., 1982.

CIRCUIT COURT JUDGE

EXHIBIT E

“ARRAIGNMENT, PLEA and SENTENCE”

STATE OF MISSISSIPPI

VS. No. 11,423

ELLIOTT LETT

Comes the District Attorney who prosecutes the Pleas for the State of Mississippi, and comes Defendant, in the presence of his Attorney, who was brought before the Court and arraigned in open Court upon the Information preferred against him herein of “Possession of a Controlled Substance With Intent to Deliver” and for plea to said charge said Defendant says that he is GUILTY.

Thereupon said Defendant was placed at the bar of the Court for sentence and was asked by the Court if he had anything to say why the sentence of the law shall not be pronounced against him herein, and saying naught. It is thereupon considered and ordered by the Court that said Defendant Elliott Lett for such his offense of “Possession of a Controlled Substance With Intent To Deliver” be and he is hereby sentenced to serve Four (4) Years in the Miss. Dept. of Corrections to run concurrently with Cause No. 11,288.

and pay all costs incurred in this prosecution and that he remain in custody until said sentence be fully complied with.

ORDERED this the 11th Day of January A.D., 1982.

CIRCUIT COURT JUDGE